IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2082 OF 2004

Ishwar Baburao Sawant & Anr. ...Petitioners.
Vs.
The Medical Officer, Health Department, F/South Ward and Ors. ....Respondents.

....

Mr. Tripathi i/b.S.A. Tawate for the Petitioners.
Ms. A.K. Savla for Respondent Nos.1 and 2.
Mr.Pradeep Jadhav, A. G. P. for Respondent No.3.

.....

CORAM : DALVEER BHANDARI,C.J. &
DR.D.Y.CHANDRACHUD, J.

August 3, 2004.

P.C.:

In these proceedings under Article 226 of the Constitution, the Petitioners have impugned a communication dated 5th August 2003 issued by the Public Health Department in the F-South Ward of the Municipal Corporation. By the communication, the Petitioners have been called upon to discontinue the trade of maintaining a Lodging and Boarding Establishment on the Fifth and Sixth Floors of the Takshshila Co-operative Housing Society, Madhavdas Pasta Road, Dadar-14. This action has been taken

since the Petitioners have been found to be conducting a business without a licence from the Municipal Corporation under Section 394 of the Mumbai Municipal Corporation Act, 1888.

2. The ground on which the action of the Municipal Corporation is impugned in these proceedings is that the Second Petitioner is a Company incorporated under the Companies Act, 1956 which by its Memorandum and Articles of Association is authorised to carry on the business of a lodging house-keeper and hotel. The submission is that the Companies Act, 1956 being a piece of Central Legislation, it would supersede the provisions of Section 394 of the Mumbai Municipal Corporation Act, 1888. There is absolutely no merit in the submission. The provisions of the Companies Act, 1956 and the Mumbai Municipal Corporation Act, 1888 operate in separate and clearly distinct spheres. The Second Petitioner may well be a Company incorporated under the Companies Act, 1956 and for the purposes of this petition, the Court may proceed on the basis that the Memorandum and Articles of Association of the Company permit it to carry on the business of

a hotel and a lodging house. That however, does not mean that the Second Petitioner is entitled to carry on the business of a Hotel or a Lodging House at any place or in any manner as it desires, without reference to the regulatory provisions of Municipal law. Municipal legislation regulates the manner in which certain trades can be conducted in the interest of public health and safety. Such legislation does not encroach upon the provisions of the Companies Act, 1956.

3. Counsel for the Petitioners relied upon a judgment of this Court in **Municipal Corporation of Greater Bombay vs. Bharat Petroleum Corporation,** 1992 Mh. L. J. 721. That, however, was a case where a notification was issued by the Central Government under Section 31 of the Petroleum Act, 1934. Section 31 empowers the Central Government, where any enactment confers upon any local authority, powers in respect of the storage and transfer of petroleum products, to limit the operation of such an enactment or to restrict the law in any manner as it deems fit. The Petroleum Act, 1931 the Division Bench held, was pre-constitution

legislation and continued to remain valid by virtue of the provisions of Article 372 of the Constitution. In these circumstances, it was held that to this extent, the Corporation Act would have no application. The judgment of the Division Bench thus applies in the context of completely different legislation and will not apply in a situation such as the present. The Petitioners have admittedly no licence under Section 394 of the Mumbai Municipal Corporation Act, 1888. The Petitioners had earlier been denied permission by the Municipal Corporation to conduct a Guest House on the Fifth, Sixth and Seventh Floors of the Building and that order was confirmed by the Appellate Authority in an appeal under Section 47 of the Maharashtra Regional and Town Planning Act, 1966. The Petitioner had filed a writ petition before this Court (Writ Petition No.987 of 2004) in which, by an order dated 16th June 2004, this Court remanded the matter back to the Municipal Authorities for fresh consideration. At the same time, this Court clarified that the order of the Court shall not be regarded as a permission granted to the Petitioners by the Court to carry on the business and the Petitioners shall have necessarily to await the

outcome of the decision of the Municipal Corporation before commencing business. It is apparent that the Petitioners have commenced business in defiance not merely of the provisions of law, but transgressing the directions issued in the order of the Court dated 16th June 2004. The action of the Municipal authority in issuing the impugned communication to the Petitioners cannot, therefore, be faulted. We do not find merit in the petition, which is accordingly rejected.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.